had consumed alcoholic beverages; if he was taking medicine; if he had been injured, etc.; and similar type questions. He was given a breathalizer test and subsequently booked. At about this time the police officer advised the petitioner as required by *Miranda* in felony cases. Later in February, 1968, a jury found the petitioner guilty. The subsequent history of the case appears in petitioner's petition.

LAW AND ARGUMENT

1. Was the Admission of Evidence of Physical Tests and Moving Pictures of such tests and the Admission of Evidence of a Blood Alcohol Test a Violation of Petitioner's Constitutional Rights?

As pointed out in *Schmerber* v. *California,* 384 US 757, the physical tests and movies thereof, as described in the petition, were neither testimony nor evidence related to some communicative act or writing by petitioner and therefore not within the purvue of *Miranda* v. *Arizona,* 384 US 436.

Since there is no real issue at law with respect to such physical tests, blood alcohol test, and movies, respondent respectfully contends that the petition for writ of certiorari be denied as to this law question.

2. Does the Miranda Doctrine apply to Misdemeanors or Minor Criminal Offenses?

The respondent has been unable to find any decisions of this Court either applying or not applying the *Miranda* decision to minor cases. In the case at bar, the maximum fine was $500.00 and the maximum jail term was six months. The ordinance contains the same provisions as the Ohio statute to the effect that the first three days of the jail sentence cannot be suspended. In Ohio the distinc-

tion between a felony and a misdemeanor is in the possible penalty. Section 1.05 and 1.06 of the Revised Code of Ohio are as follows;

> "1.05 Definition of 'imprisoned.'
>
> As used in the Revised Code, unless the context otherwise requires, 'imprisoned' means imprisoned in the county jail if the maximum term prescribed for the offense is one year or less, and imprisoned in the penitentiary if the maximum term prescribed for the offense is longer than one year."

> "1.06 Definition of felonies, misdemeanors, and minor offenses.
>
> Offenses which may be punished by death or by imprisonment in the penitentiary are felonies; all other offenses are misdemeanors. As used in the Revised Code 'minor offense' is synonymous with misdemeanor."

In view of the above quoted sections, there is no question but that Ohio considers the offense in question to be a minor offense.

In respondent's view, the real and only question at issue is whether or not *Miranda* applies to utterances in minor offenses.

The Court of Appeals of Franklin County, Ohio, in *Columbus* v. *Hayes*, 9 Ohio App. (2d) 38, said that it did not. In the same cause the Ohio Supreme Court in Case No. 40794 refused to review the case, 40 Ohio Bar 29; and this Court denied a petition for a writ of certiorari on November 6, 1967, with only Justice Fortas dissenting. 88 Supreme Court Reporter 296.

In respondent's view, *Miranda* does not presently apply to minor offenses; however, since this Court has not affirmatively taken a position on this question, there is con-

siderable confusion as to the application of *Miranda* in minor offenses.

Respondent therefore joins the petitioner in requesting the issuance of a writ of certiorari on the question of the application of *Miranda* to utterances in minor offenses.

Respectfully Submitted,

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